

# EXHIBIT 4

Teleconference

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LG.PHILLIPS LCD CO., )  
LTD., )  
          ) Plaintiff,     ) Civil Action No.  
          )                ) 04-343-JJF  
v.       )  
          ) TATUNG CO.; TATUNG )  
COMPANY OF AMERICA, )  
INC.; and VIEWSONIC )  
CORPORATION, )  
          )  
Defendants. )

TELECONFERENCE  
Wednesday, August 23, 2006  
1:00 p.m.

BEFORE: THE HON. VINCENT J. POPPITI

APPEARANCES:

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<p>1 APPEARANCES (CONTINUED):  2 DAVID E. MOORE, ESQ.  3 Potter Anderson &amp; Corroon LLP  4 Hercules Plaza, 6th Floor  5 1313 N. Market Street  6 Wilmington, Delaware 19801  7 and  8 TRACY R. ROMAN, ESQ.  9 Bingham McCutchen LLP  10 335 South Grand Avenue  11 44th Floor  12 Los Angeles, California 90071-3106  13 and  14 SCOTT R. MILLER, ESQ.  15 Connolly Bove Lodge &amp; Hutz LLP  16 Wells Fargo Center  17 South Tower, Suite 3150  18 Los Angeles, California  19 90071-1560  20 For the Defendant ViewSonic  21 Corporation  22  23 ANNE SHEA GAZA, ESQ.  24 Richards, Layton &amp; Finger  One Rodney Square  Wilmington, Delaware 19801  and  25 STEPHEN B. PERKINS, ESQ.  Greenberg Traurig, LLP  2450 Colorado Avenue  Suite 400 East  26 Santa Monica, California 90404  For the Defendant Tatung Co. And  Tatung Company of America, Inc  27  28 THE COURT: Let's start with a roll  29 call, please. Let's start with LPL  30 MR. KIRK: Richard Kirk from The Bayard  31 Firm for the Plaintiff LG Philips LCD Co., Ltd, with me</p>	<p>1 that deal with, in the first instance, discovery, and  2 then focusing on those portions of the scheduling order  3 dealing with Markman and plain construction, I am  4 satisfied, having viewed this order, and having been  5 familiar with the order of other judges of the court,  6 some of whom have in large part similar orders, I know  7 there are some differences, satisfied that the exchange  8 and completion of contention interrogatories contemplated  9 by that section of this order in paragraph 4, I'm  10 satisfied that those contention interrogatories focus on  11 claims, defenses and facts, and that the section of the  12 scheduling order that deals with Markman squarely focuses  13 on claim construction. They are two separate and  14 distinct parts of the order and contemplate two separate  15 and distinct processes.  16 So I am satisfied that with respect to  17 an assertion that mention interrogatories that may focus  18 and in fact in this case do focus on claim construction,  19 those interrogatories, if answered, need to be answered  20 in the context of the process dealing with Markman and  21 not before then.  22 With that general guidance, if you will,  23 I expect that we can move forward. This is ViewSonic's  24 applications.</p>
<p>1 on the line is Rel Ambrozy from McKenna, Long &amp; Aldridge  2 in Washington.  3 MR. AMBROZY: Good afternoon, Your  4 Honor.  5 THE COURT: Good afternoon. Next  6 please.  7 MR. MOORE: Good afternoon, Your Honor.  8 David Moore from Potter Anderson &amp; Corroon on behalf of  9 ViewSonic and I have on the line with me Tracy Roman from  10 Bingham McCutchen and Scott Miller from Connolly Bove in  11 California.  12 MS. GAZA: Your Honor, the Tatung  13 Defendant is Anne Gaza from Richards, Layton &amp; Finger and  14 with me is Steve Perkins from Greenberg Traurig.  15 THE COURT: Is that everyone?  16 MR. KIRK: Yes, Your Honor.  17 THE COURT: Okay. And, please, as we  18 begin to spend part of the afternoon with each other,  19 remember that it's going to be extraordinarily important  20 for the court reporter to know who is speaking.  21 Before we get started it may be helpful  22 for me to suggest that upon reviewing the Rule 16  23 scheduling order that's in place in this matter, and  24 having looked at the portions of the scheduling order</p>	<p>1 MS. ROMAN: Yes, good morning, Your  2 Honor -- good afternoon your time, Your Honor. This is  3 Tracy Roman.  4 THE COURT: Good afternoon, Ms. Roman.  5 MS. ROMAN: We do appreciate that  6 clarification, as you can tell from the motion this has  7 been underlying most of the issues raised in the  8 interrogatories and request for admission.  9 THE COURT: Yes.  10 MS. ROMAN: I believe, Your Honor, that  11 would effectively address the issues with regard to  12 interrogatory No. 1 seeking the infringement contention  13 from the plaintiff.  14 THE COURT: Your Honor, it may be also  15 helpful for everyone to understand, you all know that in  16 the discovery dispute procedures, the order I don't have  17 squarely in mind in terms of when I entered that some  18 time ago in this case, the procedures do contemplate from  19 time to time that I would have appropriate ex parte  20 communication with the judge that's presiding in the  21 matter. I have done that in other cases. And for  22 purposes of marching up to this issue in this case, I  23 thought it was extraordinarily important for me to have  24 conversation ex parte with Judge Farnan. I did that.</p>

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<p>1        And that conversation certainly forms      2 the basis of my guidance to you this afternoon. That may      3 even help in terms of getting beyond -- once I enter an      4 order -- what you all decide you may want to be doing      5 with it. Okay?</p> <p>6        MS. ROMAN: Thank you, Your Honor. This      7 is Tracy Roman again.</p> <p>8        I guess where I would appreciate, just      9 to clarify so I don't waste Your Honor's time going over      10 any of the interrogatories or request for admission that      11 you believe would fall in the second category of      12 discovery that focuses on the Markman Hearing, I just      13 want to make sure I am clear on that so I can move      14 forward with the other request.</p> <p>15       THE COURT: Well, certainly      16 interrogatory No. 1, the contention interrogatory. And,      17 quite frankly, there are bits and pieces of others. And      18 I don't know if that's very helpful because what I don't      19 want to do is necessarily start through my view of your      20 respective presentations because I think once we get into      21 discussing those, I will have some questions and expect      22 that you may have additional development to the positions      23 you have already taken.</p> <p>24       If, as you begin to go through those, if</p>	<p>1 in its possession, custody and control in response to the      2 discovery request. It did not, as suggested in the      3 opposition, refuse to provide information until after      4 expert discovery had been completed; rather it simply      5 reserved its right to supplement the responses with any      6 additional discovery that came to light through expert      7 discovery.</p> <p>8        And the second point, and perhaps more      9 importantly, was that because contention interrogatories      10 were in dispute between the parties and both sides were      11 taking similar positions, ViewSonic offered both orally      12 and in writing, as is set forth in our motion, to be      13 bound by whatever ruling Your Honor made with respect to      14 contention interrogatories and if necessary to supplement      15 its responses in accordance with that ruling.</p> <p>16       THE COURT: Yes.</p> <p>17       MS. ROMAN: Just to clarify those to      18 points.</p> <p>19       I suppose we should turn, then, to the      20 interrogatories. Looking directly at interrogatory No.      21 1.</p> <p>22       THE COURT: Give me one moment, please.</p> <p>23 And I am at your middle -- at Exhibit 3?</p> <p>24       MS. ROMAN: Yes, Your Honor.</p>
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<p>1 I think that my guidance with respect to the scheduling      2 order implicates any particular interrogatory or any      3 particular request for admission, I will tell you that.</p> <p>4       MS. ROMAN: Okay, Your Honor --</p> <p>5       THE COURT: Is that helpful?</p> <p>6       MS. ROMAN: Yes, it is.</p> <p>7       THE COURT: If you need a moment to      8 regroup.</p> <p>9       MS. ROMAN: Well, Your Honor, let me      10 just start them before we go through I guess each      11 individual disputed discovery request which sounds like      12 it would be the most useful.</p> <p>13       THE COURT: I think that makes sense      14 because that's what I would have to do in any event.</p> <p>15       MS. ROMAN: Okay. Let me point out a      16 few things that were raised in the opposition, just so we      17 can get them off the table hopefully. That is, that the      18 plaintiff excuses a lot of its failure to provide what we      19 feel are proper responses to the discovery by pointing to      20 ViewSonic's own responses, which are the subject of this      21 motion but because it was raised in the opposition, we      22 would like to clarify two of the points there.</p> <p>23       The first point there is that ViewSonic      24 did provide the plaintiff with all the information it had</p>	<p>1       THE COURT: Okay.</p> <p>2       MS. ROMAN: With the understanding that      3 Your Honor has set forth, with regard to contention      4 discovery, I would say that I think that there is still      5 room for a response to interrogatory No. 1 that      6 contemplates setting forth the plaintiff's claims and      7 facts supporting those claims regarding what it believes      8 are the infringing components of the product.</p> <p>9       Now, they have set forth that      10 information with respect to the VX900 but lacking from      11 the response is two other products that we know plaintiff      12 has in its possession and has evaluated, at least in the      13 context and purpose of other cases: The VX2000 and the      14 VE155B, as in boy. And neither of those products are set      15 forth in here and it's unclear to ViewSonic whether      16 plaintiff is going to contend that those products      17 similarly infringe the patents in suit so that we can      18 begin preparing defenses.</p> <p>19       MR. AMBROZY: If I may respond, Your      20 Honor</p> <p>21       THE COURT: Please.</p> <p>22       MR. AMBROZY: This is Rel Ambrozy.</p> <p>23       As we've laid out in both our response      24 to the certification under Rule 7.1.1, as well laid out</p>

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<p>1 in our brief, it's our position that any discussion of      2 interrogatory No. 1 is improper for the simple reason      3 that in none of the written communication or in any of      4 the oral communication were there any deficiencies raised      5 in regard to LPL's response to ViewSonic's interrogatory      6 No. 1.</p> <p>7 The first and only time it came up was,      8 as we noted in our footnote in our brief, was in the      9 context of exchanging claim constructions. And there was      10 no pointing out of what and where it was deficient. The      11 day before we actually filed our opposition to      12 ViewSonic's motion we tried to raise this point with      13 opposing counsel and were basically shut down, as we      14 pointed in our brief, simply because claim constructions      15 were not going to be provided.</p> <p>16 THE COURT: You did say that with      17 respect to interrogatory No. 1, and I guess my question      18 is this: Subsequent to the briefing having been closed,      19 if you will.</p> <p>20 MR. AMBROZY: Yes.</p> <p>21 THE COURT: And my having to jockey      22 everyone on a hearing date from last week until today --      23 and I do appreciate your professional courtesy with      24 respect to that -- has there been any further discussion</p>	<p>1 We disagree that there was a failure to      2 meet and confer. We do admit that interrogatory No. 1      3 itself was not specifically identified in our request for      4 a meet and confer letter, but the fact is that it deals      5 with -- the request specifically deals with plaintiff's      6 position on infringement contentions. And that issue was      7 discussed at length in multiple conversations and in      8 exchange of multiple correspondence.</p> <p>9 While the number itself might have not      10 been specifically called out, plaintiffs were well aware      11 that that contention interrogatory was at issue. And we      12 were trying to come up with a schedule that would      13 accommodate a supplementation of that interrogatory.</p> <p>14 That said, Your Honor, I'm not certain      15 that a further meet and confer on the issue is really      16 necessary. I mean, if plaintiffs are willing to accept      17 that they would supplement similar to the response that      18 they already provided with regard to the VX900 for these      19 two products, that really could resolve the issue and we      20 could give them a couple of weeks in which to do that.</p> <p>21 THE COURT: Would that answer the      22 question, Mr. Ambrozy?</p> <p>23 MR. AMBROZY: I think it would, Your      24 Honor. I would have to check with our client, but I</p>
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<p>1 in a meet-and-confer context? And if there hasn't been,      2 what additional meet and confer would be beneficial for      3 purposes of your having it and then for my having an      4 opportunity to look at what remains in dispute after      5 that?</p> <p>6 MR. AMBROZY: I think it would be very      7 beneficial, Your Honor, because, quite honestly, this is      8 the first meat on the bones that we have heard of in      9 regard to their objections to our interrogatory 1      10 response. Page 3 of their brief lays out just basically      11 very thin objections to our answer, but doesn't give any      12 meat on the bone to what they were looking for in a      13 response. So, quite honestly, I think a meet and confer      14 would be beneficial.</p> <p>15 THE COURT: And with respect to      16 interrogatory No. 1 and meet and confer, that really was      17 a discrete assertion that there was a failure to meet and      18 confer. Am I fair in stating it that way?</p> <p>19 MR. AMBROZY: I think it's correct, Your      20 Honor.</p> <p>21 THE COURT: May I have a response to      22 that with respect to interrogatory No. 1.</p> <p>23 MS. ROMAN: Yes, Your Honor. This is      24 Tracy Roman.</p>	<p>1 think we could have that answer to you in a day.</p> <p>2 THE COURT: Let's proceed in that      3 fashion, I think it will save you further discussion      4 today, it will certainly save me from focusing squarely      5 on interrogatory No. 1. And I would like the answer      6 tomorrow so that you can fairly meet Ms. Roman's proposal      7 that you be given -- is it two weeks that you said?</p> <p>8 MS. ROMAN: Yes, Your Honor.</p> <p>9 THE COURT: Yes. You are all hopefully      10 in front of a calendar, I am not.</p> <p>11 MR. AMBROZY: Thank you, Your Honor.</p> <p>12 THE COURT: I realize I could just add      13 14 to 23...</p> <p>14 MS. ROMAN: Dave, can you please pull      15 that up, I don't have one in front of me.</p> <p>16 MR. AMBROZY: Two weeks from now would      17 be the 6th of September.</p> <p>18 THE COURT: That's fine.</p> <p>19 MS. ROMAN: Your Honor, I will follow      20 along in the motions, if that's what you have in front of      21 you, rather than necessarily in numerical order of the      22 interrogatories that are in dispute.</p> <p>23 The next on the motion is interrogatory      24 No. 7. This interrogatory seeks plaintiff's contention</p>

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<p>1 that ViewSonic's products have enjoyed commercial success  2 due to practicing the inventions disclosed in the patents  3 in suit.</p> <p>4 THE COURT: Yes.</p> <p>5 MS. ROMAN: We do acknowledge that  6 plaintiff supplemented its response to this  7 interrogatory, but they simply supplemented it to say  8 exactly what we set forth in our motion, which is that  9 evidence of commercial success includes the fact that the  10 technology protected by the patents in suit is, through  11 LPL's knowledge, widely employed in the industry. It  12 provides no facts as to who is employing it, what the  13 products are in which it's being employed, in what  14 market, and any facts that establish actual sales and  15 public acclaim.</p> <p>16 As one of the largest manufacturers of  17 LCD modules, LPL certainly has access to market industry  18 information. And that's the kind of information that  19 could have been presented in response to this  20 interrogatory, including an identification of those  21 parties in the marketplace that are supposedly practicing  22 the invention which makes it a commercial success.</p> <p>23 MR. AMBROZY: If I may respond, Your  24 Honor.</p>	<p>1 what you have already provided, you are waiting for  2 ViewSonic to be responsive in its own right, I'm not sure  3 I can measure that other than accept you at your word  4 because there is no motion to compel ViewSonic's  5 responses to discovery that I expect has been closed.  6 Is that a fair characterization of what  7 I think I'm hearing?</p> <p>8 MR. AMBROZY: Well, our response is not  9 solely based on what we have or have not received from  10 ViewSonic. It's also in regard to, as I said, these  11 third-party subpoenas have gone to all types of monitor  12 manufacturers, either OEMs or the original manufacturers  13 themselves. And we have not had the opportunity to study  14 all those documents in response to all the subpoenas,  15 simply because not all the documents have been produced  16 yet.</p> <p>17 In addition to that, some of our  18 commercial success evidence will come from both Tatung  19 and from ViewSonic. And in regard to your last point as  20 to whether you have or have not seen a motion to compel  21 the defendants' production, that is, we have already had  22 a meet and confer and we are in the process of getting  23 ready to file with Your Honor to force that issue.</p> <p>24 THE COURT: I understand.</p>
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<p>1 THE COURT: Please.</p> <p>2 MR. AMBROZY: Your Honor, at this point  3 in the discovery process what we have found is exactly  4 what we put in our response to the interrogatory. We  5 understand that it's widely employed in the industry, but  6 as far as giving them a detailed matrix as to who makes  7 it, how many they have sold and so forth, we are of the  8 opinion that, first of all, we need to conduct additional  9 discovery. I believe that ViewSonic and/or Tatung has  10 issued in at least in 10 to 13 third-party subpoenas. We  11 haven't received all the documents back from that nor  12 have we analyzed that.</p> <p>13 And in regard to ViewSonic's document  14 production, we have served on ViewSonic document request  15 Nos. 2 through 5, 18, 20 to 32 and 46 to 48 asking for  16 specifics as to modules or monitors that were listed in a  17 chart that they provided in response to LPL's  18 interrogatory No. 2. And once we obtain all that  19 information, we can better formulate our response to that  20 commercial success interrogatory.</p> <p>21 THE COURT: If what I understand you are  22 telling me correctly, if you have provided what you have  23 and obviously you can't provide what you don't have, if  24 you are also saying that in order for you to supplement</p>	<p>1 Ms. Roman do you want to respond to  2 that? I think what I hear them saying is they have given  3 you what they have. They are in a process of evaluating  4 additional information and, of course, they have an  5 obligation to supplement once that additional information  6 is evaluated and understood.</p> <p>7 MS. ROMAN: Yes, Your Honor. And we  8 understand those reasons. I guess the difficulty we have  9 with the response currently provided for interrogatory  10 No. 7 is that it states an understanding and knowledge  11 that LPL purports to have and then provides no basis for  12 that knowledge or understanding.</p> <p>13 As I think I'm hearing Mr. Ambrozy today  14 say that LPL simply has no facts to support that  15 understanding, and is waiting for further discovery. We  16 would like a response that states that as opposed to a  17 response that makes it unclear whether or not they have  18 actual facts that they are choosing not to share at this  19 time versus not having any facts at all and rather a  20 simple contention without any underlying basis.</p> <p>21 THE COURT: Of the interrogatories --  22 just give me one moment, please, while I refresh my own  23 recollection of this.</p> <p>24 "LPL objects to this interrogatory to</p>

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<p>1 the extent that it seeks information protected by the      2 attorney-client privilege of the work product doctrine.      3 LPL is awaiting discovery from ViewSonic and reserves a      4 right to supplement this interrogatory answer, if      5 appropriate, when and if additional information becomes      6 available or otherwise."</p> <p>7 MR. AMBROZY: That was the previous      8 answer, Your Honor; it has since been supplemented. I      9 can basically give you the outline.</p> <p>10 THE COURT: I think you did, in      11 Exhibit 15?</p> <p>12 MS. ROMAN: I believe it's 14, Your      13 Honor. Exhibit 14 to plaintiff's opposition.</p> <p>14 MR. AMBROZY: Page 3 to 4.</p> <p>15 THE COURT: In which one again, please?</p> <p>16 MR. AMBROZY: LPL's Exhibit 14.</p> <p>17 THE COURT: I have it. Thank you for      18 redirecting me because I certainly had the paper here.      19 LPL's response, in part, reads "to LPL's knowledge,      20 widely employed in the industry, that users of the      21 technology include competitors of both Tatung and      22 ViewSonic."</p> <p>23 Apparently, it is fair comment to      24 suggest if you are acknowledging some underpinning to it,</p>	<p>1 willfully infringes the patents in that suit. And the      2 distinct issue with this interrogatory is that plaintiff      3 responded that ViewSonic has infringed by, for example,      4 importing products known to infringe the patents in suit,      5 not only since after the filing of the lawsuit, but the      6 response alleges that it has continued to do so including      7 after filing the lawsuit.</p> <p>8 What's absent from this response is the      9 facts supporting LPL's contention apparently that      10 ViewSonic was willfully, knowingly importing products      11 that infringed the patents in suit before the filing of      12 the lawsuit. And the reason that this is causing      13 confusion for ViewSonic is that plaintiff has admitted,      14 in response to request for admission, that it did not      15 provide any see cease and desist or notification to      16 ViewSonic of the alleged infringement prior to filing the      17 lawsuit.</p> <p>18 So we would like the facts that support      19 its contention that ViewSonic was knowingly importing and      20 infringing products prior to the filing of the lawsuit.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. AMBROZY: Our response to that is,      23 Your Honor, that willful infringement occurs both before      24 and after the filing of a lawsuit. And as we laid out in</p>
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<p>1 even at this stage, it may be that the knowledge, the      2 ViewSonic universe of knowledge will be greater as you      3 examine whatever information you have, but you did      4 respond by saying that "to LPL's, widely employed in the      5 industry," and I do think it's fair comment to say: What      6 are the facts that underpin that knowledge?</p> <p>7 Ms. Roman, is the time frame you      8 outlined with respect to No. 1 acceptable with respect to      9 anything that I order today?</p> <p>10 MS. ROMAN: Yes, Your Honor, it is.</p> <p>11 THE COURT: I understand, Mr. Ambrozy,      12 that there will be some supplement. And I understand      13 that you may still be receiving information as a result      14 of third-party subpoenas, but I will require at this      15 juncture that you provide the facts that support the      16 claimed knowledge of your client.</p> <p>17 MR. AMBROZY: That's fine, Your Honor.</p> <p>18 THE COURT: Thank you.</p> <p>19 Let's go on to 8, please.</p> <p>20 MS. ROMAN: Yes, Your Honor. Again, for      21 the court reporter, this is Tracy Roman.</p> <p>22 Interrogatory No. 8 is similar to the      23 circumstance we just discussed with interrogatory No. 7.      24 This seeks plaintiff's contention that ViewSonic</p>	<p>1 our response to interrogatory No. 8, that that      2 infringement has continued since the complaint was filed.      3 And as we read the call of the interrogatory, there was      4 no specific request as to what was the basis for our      5 prelitigation contention of willful infringement. So we      6 basically provided the answer that was, in our mind, a      7 complete response.</p> <p>8 THE COURT: Well, the interrogatory, and      9 I am working off the original filing, there has been no      10 supplement to it; correct?</p> <p>11 MR. AMBROZY: Correct, Your Honor.</p> <p>12 THE COURT: "State all material facts      13 that support your contention that ViewSonic's alleged      14 infringement has been willful."</p> <p>15 And if I understand Ms. Roman correctly,      16 she believes that the interrogatory encompasses pre,      17 post; correct?</p> <p>18 MS. ROMAN: That's correct, Your Honor.</p> <p>19 To the extent that that is in their contention.</p> <p>20 THE COURT: Any other comments, please?</p> <p>21 MR. AMBROZY: No, Your Honor.</p> <p>22 THE COURT: I am satisfied that      23 additional response needs to be made to interrogatory No.      24 8.</p>

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<p>1           MS. ROMAN: Thank you, Your Honor.</p> <p>2 Moving on to interrogatory No. 12.</p> <p>3           THE COURT: Just a second. Okay. No.</p> <p>4 12, please.</p> <p>5           MS. ROMAN: Keeping in mind and being</p> <p>6 sensitive to Your Honor's point at the beginning of this</p> <p>7 hearing that there is a distinction between Markman</p> <p>8 construction discovery and contention discovery that</p> <p>9 focuses on the claim defenses and facts of the case. We</p> <p>10 again think there is room, similar to interrogatory No.</p> <p>11 1, for some response both factual and based on claims to</p> <p>12 respond to interrogatory No. 12.</p> <p>13           LPL did provide responses to this</p> <p>14 interrogatory, but as noted in the motion, the response</p> <p>15 is effectively the same with regard to each cited</p> <p>16 reference. And that is, that they say that the cited</p> <p>17 reference fails to teach at least one of the following</p> <p>18 elements. And then it sets forth the same three verbatim</p> <p>19 elements which are directly pulled from the claim. So</p> <p>20 ViewSonic is left to question which element, if 1, 2 or</p> <p>21 all 3 are purportedly missing from the cited reference.</p> <p>22 And why, if that reference has what we believe is a</p> <p>23 corollary element similar to one cited in the accused</p> <p>24 product, why is a distinction being made between them?</p>	<p>1 is requested by the interrogatory as to whether it</p> <p>2 qualifies as prior art, but we feel that there is really</p> <p>3 no need to give any additional information as to what</p> <p>4 aspects anticipate or what elements -- what limitations</p> <p>5 in the claim are anticipated by the various elements in</p> <p>6 the publications themselves.</p> <p>7           And we take the position that we</p> <p>8 actually went above and beyond providing the information</p> <p>9 that was requested in the interrogatory.</p> <p>10           THE COURT: And you may have done that</p> <p>11 in part because you -- maybe what the response was was</p> <p>12 titillating in a sense by giving some and not continuing</p> <p>13 down the road.</p> <p>14           I am satisfied that the supplementation</p> <p>15 of this interrogatory should be of a qualification</p> <p>16 information as you've just described; but beyond that, I</p> <p>17 believe it is getting into the, falling under the</p> <p>18 umbrella of the process as it relates to claim</p> <p>19 construction, and will not require that at this point in</p> <p>20 time.</p> <p>21           MR. AMBROZY: Thank you, Your Honor.</p> <p>22           MS. ROMAN: Your Honor, this is Tracy</p> <p>23 Roman.</p> <p>24           This raises a question that we would</p>
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<p>1           And most notably, the information that</p> <p>2 was provided in response to this interrogatory is</p> <p>3 substantially less than information than LPL set forth in</p> <p>4 a declaration by its expert during the preliminary</p> <p>5 injunction briefing. And at the very least, we would</p> <p>6 have expected to have that level of detail provided in</p> <p>7 response to this interrogatory, which could be done</p> <p>8 without any claim construction. Similar to how they set</p> <p>9 forth their infringement contention in response to</p> <p>10 interrogatory No. 1.</p> <p>11           THE COURT: Mr. Ambrozy.</p> <p>12           MR. AMBROZY: Your Honor, we feel</p> <p>13 that -- first of all, if you look at the call of the</p> <p>14 interrogatory, it asks for each reference listed below</p> <p>15 that you contend does not qualify as prior art. And as</p> <p>16 we stated in our brief, the request as to whether it</p> <p>17 qualifies as prior art, we also understand it to mean</p> <p>18 whether it, if it's a patent, was it before the filing</p> <p>19 date of the patents in suit or if it was a publication</p> <p>20 such as the pixel vision SGT15T. Whether it qualifies as</p> <p>21 prior art because it was published to a significant</p> <p>22 number of people, whether it was enabling and so forth.</p> <p>23           So, as we stated in our brief, we would</p> <p>24 supplement to provide the qualification information that</p>	<p>1 appreciate some clarification on with regard to the</p> <p>2 scheduling order. It doesn't seem to contemplate the</p> <p>3 written discovery continuing through the Markman Hearing.</p> <p>4 To the extent that these, any of these disputed discovery</p> <p>5 requests are going to be held until after claim</p> <p>6 construction, is Your Honor going to include in his order</p> <p>7 something to the effect of a timing for responding to</p> <p>8 this discovery so we don't have to reissue it and have</p> <p>9 the process started all over?</p> <p>10           THE COURT: Well, there is a requirement</p> <p>11 for supplementation and it just seems to me, not having</p> <p>12 crafted this scheduling order, and understanding now that</p> <p>13 perhaps the parties -- well, not having crafted the</p> <p>14 scheduling order -- let me just leave it at that -- that</p> <p>15 the process leading to Markman does not contemplate, if</p> <p>16 you will, segregated Markman discovery; but what it does</p> <p>17 contemplate is that you will supplement the discovery</p> <p>18 that is already out there.</p> <p>19           And I really haven't, Ms. Roman, given</p> <p>20 any thought to the question you just asked. In light of</p> <p>21 the guidance that I have given you, I think it's</p> <p>22 important for me to consider your request.</p> <p>23           MS. ROMAN: Thank you, Your Honor.</p> <p>24           THE COURT: I will leave it at that for</p>

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<p>1 the moment.</p> <p>2 MS. ROMAN: Thank you, Your Honor. And</p> <p>3 we were certainly thinking something appropriate of</p> <p>4 20 days after the service of the Court's Markman ruling</p> <p>5 is a possibility.</p> <p>6 THE COURT: Yes. Well, that may make</p> <p>7 some sense. And maybe what would be helpful once we</p> <p>8 conclude today, expecting that I will be issuing a</p> <p>9 written follow-up so Judge Farnan understands what I did</p> <p>10 in the next four to five days, if you will perhaps make a</p> <p>11 proposal, very brief proposal in writing, that may make</p> <p>12 some sense.</p> <p>13 MS. ROMAN: Certainly, Your Honor. And</p> <p>14 we will talk with plaintiff's counsel in that regard as</p> <p>15 well and try to come to an agreed position.</p> <p>16 THE COURT: Good. I certainly don't</p> <p>17 want to be doing anything that appends this order or that</p> <p>18 complicates the scheduling order.</p> <p>19 MS. ROMAN: We understand, Your Honor.</p> <p>20 THE COURT: Good. Thank you.</p> <p>21 MS. ROMAN: Finishing then with</p> <p>22 interrogatories No. 3 and 4, taking them in tandem as</p> <p>23 they seek similar information and have a similar</p> <p>24 objection raised.</p>	<p>1 were to list all the ones that were in our possession</p> <p>2 because, as you may know, there are at least three</p> <p>3 litigations going on involving monitors and modules</p> <p>4 inside the monitors, that might give a misleading answer.</p> <p>5 But moreover, if we were to list just one or two and then</p> <p>6 some are left out that were in our possession, that</p> <p>7 reveals whether -- perhaps reveals whether we thought</p> <p>8 the ones that were left out of the complaint infringe or</p> <p>9 not.</p> <p>10 THE COURT: Well, they are not asking</p> <p>11 for you to be selective, they are asking for all.</p> <p>12 MR. AMBROZY: They ask for all, but by a</p> <p>13 process of elimination --</p> <p>14 THE COURT: They have asked the</p> <p>15 question, if you will.</p> <p>16 MR. AMBROZY: Yes.</p> <p>17 THE COURT: I don't see that responding</p> <p>18 to it abrogates or even steps anywhere close to</p> <p>19 attorney-client privilege or work product. So you have</p> <p>20 got to talk to me a little bit more about that because I</p> <p>21 just don't see that. If they are going to be confused by</p> <p>22 what you say because you think you are giving them too</p> <p>23 much, quite frankly, that's their dilemma to have to</p> <p>24 unravel.</p>
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<p>1 The 3 and 4 ask for plaintiff to</p> <p>2 identify those ViewSonic products that it had in its</p> <p>3 possession both before and then after the filing of the</p> <p>4 complaint.</p> <p>5 THE COURT: Yes.</p> <p>6 MS. ROMAN: We have tried to be very</p> <p>7 clear that we weren't seeking any legal analysis,</p> <p>8 opinions or communication, merely an identification of</p> <p>9 things which we perceived to be no different than an</p> <p>10 identification of documents which, as we have cited to</p> <p>11 Manville, has been held not to be attorney work product</p> <p>12 or privileged information. And the position, as I</p> <p>13 understand it, by LPL is that these interrogatories still</p> <p>14 seek attorney work product and privileged information and</p> <p>15 that's where the impasse lies.</p> <p>16 THE COURT: And we are going to hear why</p> <p>17 in a moment. Mr. Ambrozy.</p> <p>18 MR. AMBROZY: Yes, Your Honor. It's</p> <p>19 very simple. The documents and individuals thought in</p> <p>20 the cited Manville Sales Corp. did not reveal any</p> <p>21 attorney-client communications and/or reveal any attorney</p> <p>22 work product and mental impressions. What ViewSonic is</p> <p>23 seeking is what were all the monitors that you had in</p> <p>24 your possession prior to filing the complaint? And if we</p>	<p>1 MR. AMBROZY: Well, respectfully, Your</p> <p>2 Honor, we don't think they will be confused. What we</p> <p>3 think they will try to make the case, well, you had three</p> <p>4 in your possession but you only put one in your</p> <p>5 complaint. Therefore it reveals to them and the world</p> <p>6 that obviously the other two didn't infringe and</p> <p>7 therefore that's where they start to narrow in on picking</p> <p>8 away at attorney-client communications and/or picking</p> <p>9 away at mental impressions.</p> <p>10 THE COURT: You already identified one.</p> <p>11 MR. AMBROZY: We did, Your Honor.</p> <p>12 THE COURT: And isn't that the point?</p> <p>13 MR. AMBROZY: We identified the one in</p> <p>14 our complaint that we believed infringed. Whether we</p> <p>15 analyze others and believe they infringe or don't</p> <p>16 infringe, that's where the mental impression comes in.</p> <p>17 And if by reviewing the ones we had in our possession,</p> <p>18 then when they take depositions of witnesses, they will</p> <p>19 say: Well, you had this one in your possession, why</p> <p>20 didn't you put this in your complaint, didn't you think</p> <p>21 it infringed? That's where they start to pick away at</p> <p>22 the attorney-client communications and/or attorney work</p> <p>23 product, and that's why we think they are improper.</p> <p>24 It doesn't rise to the level of</p>

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<p>1 innocuous information that were the documents and the      2 witnesses identified in the Manville Sales case. They      3 are two totally separate identifications, if you will.      4         THE COURT: Thank you, Ms. Roman.      5         MS. ROMAN: Yes, Your Honor, we disagree      6 that it would reveal the mental impressions. Quite      7 simply, if they have products in their possession that      8 haven't been accused of infringement, it certainly would      9 show us potential noninfringing alternative information,      10 to which ViewSonic is entitled discovery, and to      11 understand the scope of their contentions regarding what      12 the inventions disclosed in the patents in suit truly      13 are. This is -- it's no different than, for example,      14 Your Honor, they say in the complaint that there is a      15 myriad of products that could potentially be infringing.      16 They've argued -- in other meet and confers, they      17 identified one of those products but that there could be      18 others; but we are not entitled to know what those      19 potential others are until they actually accuse them of      20 infringement.</p> <p>21         It's making it very difficult for us to      22 proceed with preparing our defenses and getting proper      23 discovery. I would add that Manville wasn't actually so      24 limited. It sought discovery regarding prior art</p>	<p>1 content is what's privileged and is what's protected.      2             And we feel that's where the      3 interrogatories 3 and 4 crossed over the line from      4 documents and witnesses into mental impressions.      5         THE COURT: Just give me a moment. And,      6 Ms. Roman, I don't know if you are refamiliarizing      7 yourself with the language as well.      8         MS. ROMAN: Yes, Your Honor.      9         THE COURT: Just a moment, please.      10         MR. AMBROZY: We feel it's the last      11 column paragraph in the column, Your Honor, that seals      12 it. Where it starts up: "Since the interrogatory      13 request at issue seeks only the identification of      14 individuals and documents, not the contents of the      15 documents or mental impression of attorneys." That's why      16 those documents were ordered produced.      17         THE COURT: I see that. In fact, I have      18 it interlined, but I'm not sure how this court saying      19 that "the interrogatory request at issue seeks only the      20 identification of the individuals and documents and not      21 the contents of the documents," I'm not sure I see that      22 distinction. I see the identification of an item to be      23 an identification of an item. What you intend to do with      24 that item or what you have done with the item or what you</p>
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<p>1 searches and opinions of validity. Certainly things that      2 if you reveal the results of prior art, using      3 Mr. Ambrozy's argument, also eventually under clever      4 thinking revealed the impressions of the attorney.      5         THE COURT: Or the identification of      6 witnesses or the identification of statements.      7         MR. AMBROZY: Your Honor, if I may      8 clarify. I think in Manville Sales what the Court      9 actually said was -- let me pull it up if I can find it.      10         THE COURT: While you are doing that,      11 let me pull out the reference in your -- it's tab 9.      12         MR. AMBROZY: Correct.      13         THE COURT: Just a second.      14         MR. AMBROZY: It's on page 2, the second      15 column, Your Honor. Starting with the cite "two more."      16         THE COURT: I see it.      17         MR. AMBROZY: And just read through that      18 paragraph. What the Court actually says the      19 identification of the prior art search is not privileged,      20 but when you get into, and I think it's a cite to Ballard      21 vs. Allegheny, the Court ruled that no work product      22 objection could be sustained until the contents of the      23 documents are sought. So although the identification of      24 the documents is not privileged, any inquiry into their</p>	<p>1 think about the item is not being asked.      2         MR. AMBROZY: But it's our position that      3 for the process of looking at what was identified, what      4 was examined.      5         THE COURT: When do you call out your      6 witnesses? When do you identify your witnesses?      7         MR. AMBROZY: In revealing the monitors,      8 Your Honor?      9         THE COURT: No. Just witnesses in      10 general.      11         MR. AMBROZY: I don't understand your      12 question, Your Honor.      13         THE COURT: When you identify witnesses,      14 does that not disclose a mental impression of an      15 attorney?      16         MR. AMBROZY: It can and cannot. Some      17 can be innocuous and some may not.      18         THE COURT: Well, I appreciate the      19 dialog, I'm satisfied that the teaching of Manville      20 doesn't preclude the identification as requested. I will      21 require that there be a response in the two-week time      22 frame. What I may do is I may, with respect to this      23 particular matter, require it to be provided sooner.      24 Although, please someone remind me, I think there was an</p>

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<p>1 agreement, was there not, that exceptions taken from      2 anything I do here today -- by today I mean when I issue      3 the order finally -- I think you agreed that there would      4 be a shorter time frame than contemplated by the rule.      5 MR. AMBROZY: It's five days, Your      6 Honor.      7 MR. KIRK: That's correct, Your Honor.      8 THE COURT: I may leave the schedule to      9 be the same.      10 Okay. Thank you. Next one, please.      11 MS. ROMAN: Tracy Roman, Your Honor.      12 I believe now we are through the      13 interrogatories and are turning to the request for      14 admission.      15 THE COURT: Okay.      16 MS. ROMAN: Your Honor, I'm not sure,      17 and, Rel, please interject if necessary, but there was a      18 supplementation provided. It was noted in the opposition      19 that plaintiffs would be supplementing certain of the      20 requests for admission. Those requests were No. 3 and      21 numbers Nos. 5 through 10.      22 THE COURT: That's my understanding.      23 Has that, in fact, occurred?      24 MS. ROMAN: It has occurred, Your Honor.</p>	<p>1 Honor.      2 THE COURT: We have availability for the      3 rest of the week, as early as possible.      4 MR. AMBROZY: Our only problem, Your      5 Honor, is we don't know who will be available to meet and      6 confer with them, but we will make our best efforts to      7 get it down by early next week.      8 THE COURT: Okay.      9 At least I understand that that's going      10 to move forward and the only thing I would request is if      11 you are looking for additional time with me that,      12 perhaps, make some effort to reserve some time as soon as      13 you can.      14 MR. MILLER: Your Honor, this is Scott      15 Miller.      16 Do we need to go through another full      17 briefing operation after the meet and confer or is it      18 possible that we could just do the three-page letter on      19 this, do you think, and try to expedite the process?      20 THE COURT: I would certainly prefer,      21 given the timelines that you are working with now, that      22 expediting is the way to go, and if you can do it in the      23 three pages, that's good.      24 MR. MILLER: Thank you.</p>
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<p>1 Unfortunately, we still feel that the responses that have      2 been provided and the supplementation don't resolve our      3 concerns.      4 THE COURT: I don't have those.      5 Correct?      6 MS. ROMAN: I believe that's correct.      7 And that's why I am hesitating, Your Honor, because I'm      8 not certain how best to proceed with going through these.      9 THE COURT: I don't think it would be      10 very efficient for any of us to be talking about      11 something that I haven't seen and I gather you have not      12 had in any event a meet and confer, if you will, about      13 the supplementation.      14 MR. AMBROZY: That's correct, Your      15 Honor.      16 THE COURT: And I would certainly -- the      17 rules contemplate it, the local rules mandate it and I      18 expect it. So there is going to have to be a meet and      19 confer with respect to those if they are still, if      20 Ms. Roman still asserts that they are deficient.      21 MS. ROMAN: Okay, Your Honor.      22 THE COURT: Do you want to propose a      23 time frame now or would you prefer to do that offline?      24 MS. ROMAN: We can propose it now, Your</p>	<p>1 THE COURT: And what I expect you are      2 going to be doing is you are going to be identifying what      3 you view to be as still deficient. So if it's a matter      4 of your saying, please, use what we have, what you      5 already have and supplement it with the three pages,      6 that's fine.      7 MS. ROMAN: Thank you, Your Honor.      8 THE COURT: Thank you.      9 MS. ROMAN: That would take us, then, to      10 request for admission No. 11 and our motion that appears      11 on page 7.      12 THE COURT: Okay. Just a second.      13 MS. ROMAN: And it's Exhibit 4 to our      14 motion.      15 THE COURT: Thank you, I'm there, 11.      16 MS. ROMAN: Yes, Your Honor. The next      17 group that we are dealing with, and starting with RAF No.      18 11, seeks really to identify the scope of the invention.      19 And we focus, particularly when we requested these      20 admissions, on using LPL's own words so that there would      21 be no concern over ambiguity or even a need for claim      22 construction. This RFA asks for LPL to admit that, as      23 disclosed in the '641 patent, which is one of the patents      24 in suit, your housing substantially supports the flat</p>

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<p>1 panel display device, when the flat panel display device      2 is mounted to the rear housing via the fastening part at      3 the rear surface of the first frame. As we note in our      4 motion, this language was taken directly from plaintiff's      5 expert's declaration.</p> <p>6 And we believe we are entitled to an      7 admission on whether or not that truly is their position,      8 as stated in that declaration. We don't believe that      9 this calls out a requirement for claim construction.</p> <p>10 MR. AMBROZY: If I may respond, Your      11 Honor.</p> <p>12 THE COURT: Yes, please.</p> <p>13 MR. AMBROZY: It is our position that it      14 absolutely requires claim construction for all of these      15 11 through 18 because they either specifically recite the      16 claim language or they paraphrase the claim language.      17 And ViewSonic's position that our expert might have      18 construed claims in the past is irrelevant.</p> <p>19 First of all, that was done in a      20 preliminary injunction context and as the Federal      21 Circuit has stated in Pfizer at 429 F 3rd 1364 and the      22 pinpoint is 1377. Claim construction in a preliminary      23 injunction context is done on a rolling basis.</p> <p>24 Therefore, once the preliminary injunction aspect is</p>	<p>1 respect to 16, and I do pause over 17. And I want you to      2 pause with me here. Maybe it's being too simple for me      3 to say that in looking at 17 -- I think what I see here      4 is a request to admit a simple fact that does not require      5 claim construction.</p> <p>6 MR. AMBROZY: Your Honor, it's our      7 position that attached to the stand absolutely implies or      8 brings in the claim construction issue, because of the      9 claims at issue, for example, 35, in the '641 patent      10 recite "a rear mountable flat panel display capable of      11 being mounted to a data processing device" and then it      12 goes on to talk about the mounting of the first frame and      13 the second frame of the display panel. So attaching to      14 the stand necessarily implicates all those claim terms      15 and falls within, falls under Judge Farnan's Rule 16      16 scheduling order.</p> <p>17 MS. ROMAN: Your Honor, this is Tracy      18 Roman.</p> <p>19 We disagree. The dilemma that      20 plaintiff's position is putting us in is that they can      21 say the VX900 has these features. These features      22 infringe the patents in suit because, for example, it has      23 two screws that enter from the rear and attach to the      24 component we are going to call a frame. But then when we</p>
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<p>1 done, claim construction can still occur at a later date      2 and they can be revised. And that's exactly the position      3 we are in at this point in time.</p> <p>4 THE COURT: That's what happens, doesn't      5 it?</p> <p>6 MR. AMBROZY: It does, Your Honor. And      7 that's why we feel that 11 through 18 all require claim      8 construction and as set forth in Judge Farnan's      9 scheduling order, Your Honor, there is a time and a place      10 for that. And until that time arises, it's impossible to      11 admit or deny this request as well as the others.</p> <p>12 THE COURT: Well, I am just focusing on      13 11 for a moment and then we will figure out what the      14 sweep is. I am satisfied that it does relate to the      15 claim construction process. I am certainly mindful of      16 what happens at the preliminary injunction stage. I am      17 mindful of how the view of the expert can change, be      18 modified, be refined over time. And I'm satisfied,      19 therefore, that there need be no further answer with      20 respect to 11.</p> <p>21 And maybe to make it easy, I don't see      22 any difference with respect to 12, and I'm happy to hear      23 you discuss with me if you see that there is a      24 difference, with respect to 13, with respect to 14, with</p>	<p>1 ask them to admit that those screws attach to something      2 else as well, they can't admit it because it requires      3 claim construction.</p> <p>4 THE COURT: But maybe this would be      5 helpful. Where is the claim that includes the language      6 "attach the stand to"?</p> <p>7 MS. ROMAN: It doesn't exist in the      8 claims, Your Honor.</p> <p>9 MR. AMBROZY: That was my point earlier,      10 Your Honor, that ViewSonic either uses the claim exactly      11 or paraphrases them. And in claim 35 in the second      12 paragraph it starts out "wherein the flat panel" --</p> <p>13 THE COURT: Just give me a second, will      14 you?</p> <p>15 MR. AMBROZY: Yes. Okay.</p> <p>16 THE COURT: I don't know that I have --</p> <p>17 keep going.</p> <p>18 MR. AMBROZY: It states: "Wherein the      19 flat display panel is between the first frame and the      20 second frame, the first frame of the back light unit      21 capable of being fixed," capable of being fixed is      22 essentially what they are asking for when they ask about      23 attaching, using the screws to attach to the stand. And      24 I will continue reading the claim language: "capable of</p>

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<p>1 being fixed to a housing of the data processing device      2 through the fastening part at the rear surface of the      3 first frame."</p> <p>4 So it may look innocuous, the statement      5 attaches the stand to the VX900 monitor, but it      6 necessarily implicates all the claim language.</p> <p>7 THE COURT: Ms. Roman.</p> <p>8 MS. ROMAN: Yes, Your Honor. The claim      9 language doesn't include the word stand and attach is not      10 some nefarious work-around by ViewSonic to try to pull in      11 claim language that doesn't exist. It's simply: Here is      12 the product, this is the feature as we observed it, and      13 the structure. The request doesn't ask them to admit      14 that those screws only attach the stand, which might in      15 some distant way reach to Mr. Ambrozy's argument. But if      16 we can't ask by discovery, about the features of the      17 product that can be observed and don't require any claim      18 construction, I'm afraid we are not going to be able to      19 have any depositions because we are always going to be      20 running into this dilemma before claim construction is      21 completed.</p> <p>22 THE COURT: I understand your respective      23 positions with respect to 17. I said that I paused over      24 it. And what I intend to do is think about it further</p>	<p>1 discovery until after a claim construction order is      2 issued.</p> <p>3 THE COURT: 17?</p> <p>4 MS. ROMAN: Yes. Looking back at 17,      5 and it stems from Mr. Ambrozy's comment regarding      6 fastening holes, and pointing out the fact that      7 underlying most of their objections to these requests for      8 admission that any time a word is used in the discovery      9 request that is a word included either in the claim of      10 the patent or in the specification of the patent or a      11 word that can be interpreted to be similar to those      12 words, we are precluded from doing discovery on it. It's      13 going to make it almost impossible for us to conduct any      14 depositions of inventors. We would appreciate your      15 guidance when you are considering this request No. 17 how      16 we can proceed forward and get around this potential land      17 mine.</p> <p>18 THE COURT: I think you can both hear      19 what I am inclined to do by virtue of the way I posed the      20 questions I asked. I just want to give it some      21 additional thought. And I appreciate what you have just      22 said.</p> <p>23 MS. ROMAN: Thank you, Your Honor.      24 And if I may step backwards, then, to</p>
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<p>1 and when we issue a decision by Monday or Tuesday of next      2 week you will have my view with respect to that.</p> <p>3 MR. AMBROZY: Your Honor, if I may just      4 point out one more claim term. In claim 36 it also asks      5 "wherein the fastening part includes a fastening hole."      6 And if you look at the request for admission No. 17, it      7 asks about the two top screws and the two screw holes      8 which obviously implicate the claim 36 and the fastening      9 part and includes the fastening hole.</p> <p>10 THE COURT: Thank you, Your Honor.</p> <p>11 MR. AMBROZY: Thank you.</p> <p>12 THE COURT: Just one moment. I am going      13 to just put you all on hold for just a moment, please.</p> <p>14 Are you all back on?</p> <p>15 MS. ROMAN: Yes, Your Honor.</p> <p>16 THE COURT: I'm sorry, I was talking to      17 a phone that kept blinking. Thank you.</p> <p>18 We are up to 18.</p> <p>19 MS. ROMAN: Your Honor, may I interject      20 for a moment?</p> <p>21 THE COURT: Sure.</p> <p>22 MS. ROMAN: Just on 17, because it      23 raises an issue that I think is going to be a problem for      24 all of the parties moving forward through the rest of</p>	<p>1 request for admission No. 16.</p> <p>2 THE COURT: Yes. Because I did ask if      3 you had any view as to why they were different, and I      4 need to hear that.</p> <p>5 MS. ROMAN: Yes, Your Honor. And I      6 don't want you jumping around too much, but I will just      7 state for the record at the moment that 16 and 18, which      8 are in this group of requests that we are sort of dealing      9 with all at once, are similar. I think 16 is a hybrid      10 for Your Honor to consider, a hybrid between request 17,      11 which requests for them to admit something about the      12 structure of the accused monitor, and potentially Your      13 Honor's ruling on 13, 14, 11 and 12, combining in      14 language that LPL argues requires construction of the      15 claim.</p> <p>16 So we would like consideration, at      17 least, on request for admission No. 16, which asks them      18 to admit -- and it's really a matter of admitting their      19 observation of the product from their analysis of the      20 product, that when assembled those screws at issue -- I'm      21 sorry, Your Honor, I misspoke. 16 actually dealings with      22 one of the prior art references that has been evaluated      23 in the case.</p> <p>24 THE COURT: It does.</p>

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13 (Pages 46 to 49)

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<p>1 MS. ROMAN: That the screw that's in the      2 center back of that product and the post do not securely      3 fix, firmly attach or make fast the device to the rear      4 housing.</p> <p>5 MR. AMBROZY: Your Honor, if I may, in      6 regard to 16 and 18, as we set forth in our brief on page      7 8 and 9, we also take the position that the whole idea of      8 asking LPL to admit as to whether something that's in      9 paper form -- this pixel vision reference, the screws      10 that are shown in there, whether they securely fix,      11 firmly attach or make fast a flat panel display is also,      12 as we stated in our brief, is posing a hypothetical,      13 first of all. And it's also vague and ambiguous because      14 how can we admit or deny something that is only in paper      15 form.</p> <p>16 MS. ROMAN: Your Honor, if I may. It      17 was a product that was evaluated by them and their      18 expert, not in paper form, but in tangible form. And the      19 statement that we are requesting them to admit is the      20 statement made by their expert witness that in fact that      21 screw to that threaded post does not securely fix, firmly      22 attach or make fast the device. This is the language      23 that was used by their expert so there should be no      24 ambiguity in it either.</p>	<p>1 MR. AMBROZY: Thank you, Your Honor.      2 THE COURT: 19, please.      3 MS. ROMAN: I do apologize again, Your      4 Honor, but I have to take us backwards one more time to      5 requests 14 and 15. These requests actually deal with      6 the prior art front mounting method, which is called out      7 specifically and designed specifically in the      8 specification to the patents in suit. It doesn't deal      9 with the actual claims or the invention disclosed.      10 And in that regard we believe that it      11 does not require any claim construction because the      12 definition of the method is set forth clearly in the      13 specifications.</p> <p>14 THE COURT: This is 14 and --      15 MS. ROMAN: And 15, Your Honor.      16 14 seeking the plaintiff to admit that      17 when practicing the prior art front mounting method, as      18 referenced in the '641 patent, the housing provides      19 substantial support for the flat panel display device      20 when mounted.</p> <p>21 THE COURT: Right.      22 MS. ROMAN: And then 15 asking the      23 plaintiff admit that the front mounting method does not      24 require that the LCD device be mounted to the front case.</p>
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<p>1 And it really is not asking for them to      2 construe any claim terms. It's asking whether or not the      3 product structure is this or is not this. Whether the      4 claim construction turns out to be that rear mountable      5 means something entirely different this has no bearing on      6 whether this is the reality of this structure of this      7 product.</p> <p>8 THE COURT: I understand the distinction      9 you are wanting to draw and I will take 16 under      10 advisement along with 17.</p> <p>11 MS. ROMAN: And, Your Honor, as I had      12 mentioned, 18, it's the same request, only 18 is the one      13 that deals with the accused monitor, the X900.</p> <p>14 THE COURT: Yes.</p> <p>15 MR. AMBROZY: Your Honor, if I may.      16 Just pointing out that in 18 as well, we take the      17 position that it's vague and ambiguous in that it asks      18 for whether the rear housing provides substantial      19 support. Again, to force a request for admission on that      20 point we think -- it's a hypothetical pose and it becomes      21 vague and ambiguous when we try to answer it.</p> <p>22 THE COURT: I understand that.</p> <p>23 That I will also deal with when I issue      24 a written decision.</p>	<p>1 We would simply ask, Your Honor, to consider those in      2 conjunction with the additional considerations that you      3 are giving to these other group of requests.</p> <p>4 MR. AMBROZY: If I may, Your Honor.      5 THE COURT: Yes, please.</p> <p>6 MR. AMBROZY: With regard to 14 and 15,      7 we reiterate the fact that it is dependent on claim      8 construction, first of all. But also 14 and 15, as we      9 spelled out in our brief, were vague and ambiguous. And      10 in addition to that, as we stated in regard to the      11 Fulhorst case, which relies on Golden Valley, we believe      12 that it's improper to ask for a comparison between prior      13 art methods or devices in comparing it to the patent in      14 suit and asking for a bald legal conclusion, which is      15 what requests 14 and 15 are doing.</p> <p>16 THE COURT: Just give me one moment,      17 please.</p> <p>18 I understand your positions with respect      19 to 14 and 15. And although I gave you -- I intend to      20 also consider that an issue when I issue a written      21 decision.</p> <p>22 MR. AMBROZY: Thank you, Your Honor.      23 MS. ROMAN: Thank you, Your Honor      24 I believe that the next request at issue</p>

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14 (Pages 50 to 53)

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1 is 19. 2 THE COURT: Yes. 3 MS. ROMAN: This request, again, seeks 4 for an admission about the structure that the DX 900 and 5 in this regard it's asking in the context of practicing 6 the prior art front mounting method as that method is 7 disclosed expressly in the patents in suit. 8 Again, it underscores and highlights for 9 Your Honor the difficulty we are having in drawing the 10 distinction between when something does and doesn't 11 require a claim construction and how much discovery we 12 can take on prior art. 13 THE COURT: Right. 14 MR. AMBROZY: If I may, Your Honor, in 15 our brief we don't point out that claim 19 is dependent 16 on claim construction. What we did make the argument on 17 is the fact that it's asking for whether the prior art is 18 disclosed in -- admit that the DX900 uses the prior art 19 front mounting method disclosed in the patent. And 20 again, it's asking for a bald legal conclusion. Judge 21 Farnan has actually looked at this issue and found it 22 improper. 23 THE COURT: Does it not ask for an 24 ultimate legal conclusion?	1 And if that is what it's doing, it is seeking a legal 2 conclusion. 3 MR. MILLER: Your Honor, this is Scott 4 Miller. 5 I don't think -- maybe this is part of 6 the point Ms. Roman was making. It doesn't say admit 7 that the VX900 does not infringe the patent claims. In 8 the patent itself it articulates the prior art method of 9 how an attachment can be made. 10 THE COURT: Right. 11 MR. MILLER: What we are asking is for 12 them to admit that what they admit is the prior art is 13 also what is found in our product. They can take the 14 position that our product also practices the invention, 15 and therefore there is an infringement. And the prior 16 art method is not articulated in a way that says front 17 mounting means screws from the front and no screws from 18 the rear. At least, we don't read it that way. 19 But we certainly need to be able to 20 understand whether or not the prior art methodology is 21 employed in this product. And they are also contending 22 that additional methodologies infringe the patents. 23 So we are not asking it in a manner that 24 is exclusive as to the infringement contention. And
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1 MS. ROMAN: Your Honor, it does not seek 2 an admission that the product does not infringe. And 3 there is nothing in here to indicate that if it practices 4 the prior art front mounting method that it cannot also 5 practice the rear mounting method. In fact, that's one 6 of the issues regarding the scope of the claims of the 7 patents that we are trying to understand through 8 discovery. 9 It's been unclear to us since the 10 beginning of this case whether or not the contention is 11 that the patent can include both the rear mounting and 12 devices that incorporate other forms of mounting in 13 addition to that. We need to get some clarification on 14 that, and this discovery is the only way we can do that. 15 MR. AMBROZY: Again, Your Honor, asking 16 for legal conclusions is not the proper way to do it. 17 THE COURT: It seems to me it does 18 require that LPL admit or deny whether the features of 19 the VX900 meet the express definition of front mounting 20 doesn't it? 21 MR. AMBROZY: We believe it does, Your 22 Honor. 23 THE COURT: I mean, I expect that that's 24 what -- it seems to me that that is what it is doing.	1 therefore we didn't believe it was seeking the ultimate 2 conclusion of noninfringement. 3 MR. AMBROZY: But it does seek the 4 conclusion as to prior art and whether that goes to the 5 invalidity of the patent. 6 THE COURT: Yes. Okay. 7 MR. MILLER: I don't think so. 8 THE COURT: I do understand your 9 respective positions and I will advise you of my rulings 10 when I write about it. 11 MR. AMBROZY: Okay. 12 MR. MILLER: If I could ask Mr. Ambrozy 13 for a little clarification. I'm not sure how it relates 14 to the validity of the patent at all, if it practices 15 what you admit. If the patent admits what the prior art 16 is, and we are not asking you to admit that the prior art 17 invalidates the patent, I don't see how this request gets 18 to that. Maybe I am misreading it. I'm not trying to be 19 argumentative, but I was very confused by Mr. Ambrozy's 20 statement regarding the validity of the patent and how 21 this request brings that into issue. 22 THE COURT: Mr. Ambrozy, do you want to 23 respond? 24 MR. AMBROZY: We are going to stand on

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15 (Pages 54 to 57)

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<p>1 our answers, Your Honor. We will stand on our answer.</p> <p>2 THE COURT: Thank you. No. 22, please.</p> <p>3 MS. ROMAN: Just a moment, Your Honor.</p> <p>4 I am turning to it.</p> <p>5 THE COURT: Is that in dispute?</p> <p>6 MS. ROMAN: Actually, Your Honor, I</p> <p>7 don't believe it is that's why I was having a little</p> <p>8 difficulty here. No. I think we were moving on to 23,</p> <p>9 Your Honor.</p> <p>10 THE COURT: Thank you.</p> <p>11 MS. ROMAN: Request No. 23 asks</p> <p>12 plaintiff to admit that a component in the VX900, which</p> <p>13 they have identified as letter C for identification</p> <p>14 purposes, is not part of an LCD module, which was also</p> <p>15 identified by letter H by their expert, and we attach the</p> <p>16 expert's description for this to their RFA.</p> <p>17 The objection argues that LPL doesn't</p> <p>18 understand what is meant by the term part of the LCD</p> <p>19 module.</p> <p>20 THE COURT: Right</p> <p>21 MS. ROMAN: Whether it requires</p> <p>22 preassembly or post assembly. ViewSonic believes that</p> <p>23 this is a classic case of responding to an admission and</p> <p>24 qualifying your answer. To the extent that you can admit</p>	<p>1 that the component identified as C is not part of the LCD</p> <p>2 module post assembly, but admit that it is part -- or</p> <p>3 preassembly, but it is part of its post assembly.</p> <p>4 THE COURT: And you are just suggesting</p> <p>5 that even though you didn't ask it that way that they</p> <p>6 should be in a position to do both, if you will.</p> <p>7 MS. ROMAN: Yes, Your Honor. I believe</p> <p>8 that the Federal Rules of Civil Procedure contemplates a</p> <p>9 responding party to respond to an RFA in as best a way as</p> <p>10 they can, admitting as much of it as they can, and</p> <p>11 qualifying their answer if necessary. And this is a good</p> <p>12 example of that.</p> <p>13 MR. AMBROZY: And obviously we take the</p> <p>14 contrary view, Your Honor, that if it was meant to be</p> <p>15 stated that way, it should have been stated that way. We</p> <p>16 can't be expected to guess as to what answer ViewSonic</p> <p>17 would like to see and then tailor our response to that.</p> <p>18 THE COURT: I understand your positions</p> <p>19 and I will advise.</p> <p>20 MR. AMBROZY: Thank you, Your Honor.</p> <p>21 THE COURT: 28.</p> <p>22 MS. ROMAN: Yes, Your Honor.</p> <p>23 THE COURT: Grouping of 28 -- just a</p> <p>24 moment. 28 through 30. Okay.</p>
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<p>1 for preassembly purposes or post-assembly purposes, they</p> <p>2 should do so and then qualify their answer.</p> <p>3 They are certainly familiar with what an</p> <p>4 LCD module is, as we noted in our brief, and it's also</p> <p>5 been used, that term has been used in their response to</p> <p>6 other discovery including in their supplemental responses</p> <p>7 to discovery. So there shouldn't be any ambiguity as to</p> <p>8 what an LCD module is.</p> <p>9 MR. AMBROZY: Again, it's not the LCD</p> <p>10 module that's in dispute here, it's the VX900 of which</p> <p>11 the LCD module is a part of and which obviously is -- the</p> <p>12 frames that attach or don't attach to that and at what</p> <p>13 point they are attached, whether it's preassembly or post</p> <p>14 assembly, again, that's ambiguous. But also just the</p> <p>15 fact that we are discussing the LCD module and whether</p> <p>16 the frames are attached or not implies claim construction</p> <p>17 again.</p> <p>18 THE COURT: And I guess my question is,</p> <p>19 why doesn't it implicate claim construction?</p> <p>20 MS. ROMAN: Your Honor, it doesn't use</p> <p>21 any of the terms of the claim. It simply asks whether a</p> <p>22 component is part of another component as they understand</p> <p>23 it from their observation of the product. Particularly</p> <p>24 if they could respond that they deny that -- or admit</p>	<p>1 MS. ROMAN: Your Honor, 28 through 30, I</p> <p>2 believe the issue is whether or not it seeks ultimate</p> <p>3 conclusion of infringement. Our position is that it does</p> <p>4 not because it actually seeks LPL's contention, not a</p> <p>5 declaration or an admission of actual infringement. Each</p> <p>6 request includes the words that LPL believes the</p> <p>7 identified product infringes.</p> <p>8 We are looking for whether or not they</p> <p>9 believe that that product infringes so we can again</p> <p>10 further start to understand what the scope of the</p> <p>11 invention disclosed in the patents in suit includes and</p> <p>12 what products and manners of mounting could be considered</p> <p>13 noninfringing alternatives.</p> <p>14 MR. AMBROZY: If I need to respond, Your</p> <p>15 Honor, I will.</p> <p>16 THE COURT: Maybe it's important, and I</p> <p>17 think it's important for me to understand why LPL's</p> <p>18 subjective beliefs about products that are not relevant</p> <p>19 to the claims or defenses in the litigation -- so it</p> <p>20 really is a Rule 26(b)(1) inquiry, is it not?</p> <p>21 MS. ROMAN: I'm sorry, Your Honor, you</p> <p>22 are asking?</p> <p>23 THE COURT: 26(b) inquiry? Why is it</p> <p>24 related? How is it relevant?</p>

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<p>1 MS. ROMAN: Well, as I mentioned, Your      2 Honor, it goes to, besides the ability to discover      3 noninfringing alternatives, structures that contemplate      4 noninfringing alternatives. In addition, Your Honor, we      5 are dealing with patents that involve flat panel display      6 devices that it's unclear, and hopefully we will get to      7 it in claim construction what scope that entails.      8 ViewSonic puts products in the marketplace that include      9 various types of, for example, LCD modules. And if we      10 can identify modules that are noninfringing alternatives,      11 that's important for us to do through the course of      12 discovery.</p> <p>13 In addition, in regards to the      14 commercial success interrogatory that we discussed      15 earlier, they responded that the patents said, the      16 inventions disclosed in the patents ensued are wildly      17 used in the industry by various competitors of both      18 ViewSonic and Tatung. This would be a classic example of      19 us trying to identify whether or not this is one such      20 device that showed commercial success of the invention.</p> <p>21 THE COURT: Okay.</p> <p>22 MR. AMBROZY: Do I need to respond, Your      23 Honor?</p> <p>24 THE COURT: Please.</p>	<p>1 discovery we have to conduct on these products, as I      2 mentioned, to go to commercial success, to damages, to      3 noninfringing alternatives.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. AMBROZY: Do you need a response,      6 Your Honor?</p> <p>7 THE COURT: Yes. Go ahead.</p> <p>8 MR. AMBROZY: I was going to say whether      9 it's a contention or not, it's ViewSonic's job to ask for      10 those contentions and seek them properly whether they be      11 in interrogatories or not. But to have LPL admit or deny      12 whether something infringes is clearly not within what's      13 called for by the discovery process.</p> <p>14 THE COURT: All right. I understand      15 your respective positions, and I will advise in writing.</p> <p>16 MR. AMBROZY: Thank you, Your Honor.</p> <p>17 MS. ROMAN: Your Honor, the last RFA at      18 issue are 31 and 32, and that actually moves backward in      19 our motion, if you are looking at it, to page 9.</p> <p>20 THE COURT: I have it. Thank you.</p> <p>21 MS. ROMAN: These two requests for      22 admission deal with correlations between structures of      23 the VX900, which is an accused product, and the VX2000      24 which as Your Honor may recall we already mentioned is</p>
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<p>1 MR. AMBROZY: First of all, it's not      2 relevant, as you pointed out, whether or not these      3 infringe. Second of all, in order to make that      4 determination requires claim construction. But more      5 importantly, and I think in regard to not only relevance      6 but it's just basically a bald legal conclusion asking      7 whether these monitors infringe or not. That's a problem      8 for the Court.</p> <p>9 MS. ROMAN: Your Honor, if I might also      10 point out as we did in the motion, LPL did provide this      11 information of its own accord in response to      12 interrogatories. It said that it had had discussions, it      13 had identified these products as potentially infringing      14 and has had discussions with those parties regarding that      15 potential infringement.</p> <p>16 THE COURT: So, I mean, I gather you      17 don't see a distinction between -- I don't remember      18 whether the word was potential or possible. Maybe you      19 can help me as we are sitting here. The possibility or      20 potential of infringement as opposed to a belief, I mean      21 is a belief a drill-down through more information?</p> <p>22 MS. ROMAN: I don't believe so, Your      23 Honor. It's simply seeking THAT this is a contention of      24 theirs so we can proceed forward with whatever necessary</p>	<p>1 product that's in their possession. It's also a product      2 that was the subject of the trial in the U.K., and which      3 was found to be noninfringing. So to try and identify      4 the corollary features between those and whether LPL's      5 contention that the structure of the VX900 differs from      6 that would help, again, ViewSonic understand the scope of      7 the claims at issue in the case.</p> <p>8 So request 31 asks LPL to first admit      9 from a foundational standpoint that it is aware of the      10 structure of the VX2000 and in particular the mounting of      11 the LCD device in that structure.</p> <p>12 And then request 32 asks them to admit      13 that the VX900 uses the same mounting of the LCD device      14 to the housing as is used in the VX2000.</p> <p>15 If I understand correctly from their      16 opposition, they take issue with the fact that we use the      17 words "manner" or "method" of mounting as opposed to      18 saying that it is mounted the same way. Certainly the      19 use of manner or method was not intended to try and sweep      20 in any claim construction of the method patent that's at      21 issue in this case, the '718. It was simply a choice of      22 phrasing to get to the structure of the mounting of the      23 LCD device of the VX2000, and can be read that way.</p> <p>24 THE COURT: And your device.</p>

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17 (Pages 62 to 65)

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<p>1 MS. ROMAN: And our device, yes.</p> <p>2 THE COURT: What does this request for</p> <p>3 admission have to do with claim construction? If I</p> <p>4 understand both 31 and 32, the view or the request, "do</p> <p>5 you know," what does that have to do with the patent in</p> <p>6 suit?</p> <p>7 MR. AMBROZY: First of all, Your Honor,</p> <p>8 the '718 patent is a method patent.</p> <p>9 THE COURT: I understand that. But I'm</p> <p>10 talking -- let's go to 31. Admit that LPL is aware of</p> <p>11 the manner or method by which the LCD device in the</p> <p>12 ViewSonic VX2000 monitor is mounted to the housing.</p> <p>13 MR. AMBROZY: Also, as we stated in our</p> <p>14 objections and answers, we take the position that aware,</p> <p>15 manner or method and mounted to the housing are all</p> <p>16 ambiguous in the sense that there are probably several</p> <p>17 ways in which to mount something. I don't know if Your</p> <p>18 Honor is aware, but a lot of these modules and monitors</p> <p>19 have various screw holes so it's not particular as to --</p> <p>20 THE COURT: I have learned a little bit</p> <p>21 about them over the past few months.</p> <p>22 MR. AMBROZY: Okay. It's our position</p> <p>23 that it basically poses a hypothetical and that it cannot</p> <p>24 be answered in a short --</p>	<p>1 that they either admit or deny.</p> <p>2 MS. ROMAN: Thank you, Your Honor.</p> <p>3 32 asks them to admit that one product</p> <p>4 uses the same structure as another product, both of which</p> <p>5 they have thoroughly evaluated. Again, it doesn't call</p> <p>6 out a specific method or manner that's called out in the</p> <p>7 '718 patent. It doesn't say that it uses the</p> <p>8 front-mounting method or the rear-mounting method, just</p> <p>9 that the structures are or are not the same. They can</p> <p>10 deny it. If they think there is a myriad method of</p> <p>11 mounting for LCD devices, they can deny it because they</p> <p>12 believe it's different.</p> <p>13 THE COURT: Right. Mr. Ambrozy.</p> <p>14 MR. AMBROZY: Your Honor, we stand on</p> <p>15 our objections that, first of all, it's ambiguous and</p> <p>16 that it also would require the construction of the '718</p> <p>17 patent.</p> <p>18 THE COURT: I am not satisfied that it</p> <p>19 would require the construction of the '718 patent, and I</p> <p>20 am also not satisfied that it is ambiguous, and will</p> <p>21 require that you admit or deny.</p> <p>22 MR. AMBROZY: That's fine, Your Honor.</p> <p>23 THE COURT: That gets us through what we</p> <p>24 needed to get through today. I did anticipate and had</p>
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<p>1 THE COURT: How is it hypothetical? If</p> <p>2 you are looking at -- they are asking you to, if you are</p> <p>3 aware of ViewSonic VX2000, and I expect you are aware of</p> <p>4 the device, they are asking whether you are aware of the</p> <p>5 method by which the LCD device is mounted?</p> <p>6 MR. AMBROZY: And I think that's the key</p> <p>7 phrase, Your Honor, mounted to the housing.</p> <p>8 THE COURT: What's difficult about that</p> <p>9 phrase?</p> <p>10 MR. AMBROZY: Because whether we admit</p> <p>11 or deny necessarily implicates whether the '718 patent</p> <p>12 and the method taught in there for mounting, or as the</p> <p>13 claim recites, fixing the flat panel display between the</p> <p>14 first and second frames, comes into play.</p> <p>15 THE COURT: Ms. Roman.</p> <p>16 MS. ROMAN: Yes, Your Honor.</p> <p>17 Request 31 simply asks them to admit</p> <p>18 whether they are aware of the mounting. It doesn't ask</p> <p>19 for anything further than that. That should be an easy</p> <p>20 one for them to admit or deny whether they are aware of</p> <p>21 it. It doesn't disclose by either admitting or denying</p> <p>22 it any claim within the '718 patent or even the nature of</p> <p>23 the '718 patent.</p> <p>24 THE COURT: 31, I am going to require</p>	<p>1 hoped that I would have been in a position to give you a</p> <p>2 ruling with respect to each. I'm sorry I'm not in a</p> <p>3 position to do that, but I do want to give some of the</p> <p>4 ones that I reserved further consideration. I would like</p> <p>5 a transcript if I can have it -- does tomorrow afternoon</p> <p>6 work?</p> <p>7 COURT REPORTER: Of course, Your Honor.</p> <p>8 That will be fine.</p> <p>9 THE COURT: I don't know how many others</p> <p>10 will be ordering transcripts. Do you all want to advise</p> <p>11 her.</p> <p>12 MR. MILLER: ViewSonic will be, Your</p> <p>13 Honor.</p> <p>14 MR. AMBROZY: As well as LPL.</p> <p>15 THE COURT: Any other matters?</p> <p>16 MR. AMBROZY: Not from LPL.</p> <p>17 MS. ROMAN: Not from ViewSonic. Your</p> <p>18 Honor, we will meet and confer on those responses that</p> <p>19 have been supplemented as early as possible.</p> <p>20 THE COURT: Thank you all very much.</p> <p>21 (The teleconference ended at 2:37 p.m.)</p> <p>22</p> <p>23</p> <p>24</p>

Teleconference

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1           CERTIFICATE

2  
3 STATE OF DELAWARE:  
4 NEW CASTLE COUNTY:  
5     I, Ellen Corbett Hannum, a Notary Public within and  
6 for the County and State aforesaid, do hereby certify  
7 that the foregoing teleconference was taken before me,  
8 pursuant to notice, at the time and place indicated; that  
9 the discussion was correctly recorded in machine  
10 shorthand by me and thereafter transcribed under my  
11 supervision with computer-aided transcription; that the  
12 transcript is a true record of the statements given by  
13 the participants; and that I am neither of counsel nor  
14 kin to any party in said action, nor interested in the  
15 outcome thereof.

16  
17       WITNESS my hand and official seal this 23rd day  
18 of August A.D. 2006.  
19

20       Ellen Corbett Hannum, RMR, CMRS  
21       Notary Public - Reporter  
22       Delaware Certified Shorthand Reporter  
23       Certification No. 118-RPR  
24